Primer: Generic Drug User Fee Act

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Introduction

Formed under the passage of the Drug Price Competition and Patent Term Restoration Act of 1984, more commonly known as the Hatch-Waxman Act, generic drugs have garnered attention in the health care spotlight. With almost two thirds of all prescriptions filled by generic drugs, the Generic Drug User Fee Act (GDUFA) is slated to be authorized by Congress before the start of fiscal year 2013. Similar to the Prescription Drug User Fee Act (PDUFA), GDUFA outlines the fee structure and review plans that generic drug companies will pay to have their products reviewed by the Food and Drug Administration (FDA). The FDA, generic drug industry, and stakeholders have agreed on the upcoming GDUFA legislation set to be voted on by Congress.

What is a Generic Drug?

Current FDA regulations define generic drugs to be “identical, or bioequivalent, to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use.” Compared to brand name drugs, generics are more widely available and considerably cheaper due to their exclusion from the development and marketing phase of the drug. Beyond pricing however, there are at least two other differences between brand name or innovator drugs and generic ones. First, though not all brand name drugs have generic alternatives, when one is available there will be a difference in the physical appearance of the product. As a generic, U.S. Trademark regulations require that these new drugs look different either by using diverse colors, shapes, sizes and tastes. Second, though bioequivalence laws require the use of the same active ingredients as innovator drugs, any other inactive ingredients in generics may vary so long as

Key Takeaways

Different Looks, Same Effects
• Generics are copies of brand name or innovator drugs whose patents have expired
• Though they contain the same active ingredients and are bioequivalent, generics may differ in taste, color, shape, size and inactive ingredients
• Like innovator drugs, generics must be approved by the FDA however, are excluded from costly testing measures

Booming Generic Market Meets Regulatory Issues
• Hatch-Waxman Act gave life to the generic pharmaceutical market in 1984
• Now, the FDA receives nearly a thousand applications for new generic drugs ever year
• The growing number of ANDA submissions has caused a backlog that needs to be dealt with

GDUFA Facilitates Review of Generic Drugs
• Pharmaceutical drug contamination along with sluggish review processes have called for user fees to raise money to help pay for a more accelerated process
• The funds, coming from application fees and facilities fees, will be used towards hiring staff for testing and international and domestic inspections

Improvements at Low Costs
• The fee is expected to raise generic drug costs by ten cents per prescription
• The shorter review times will ensure access of generic drugs for patients while saving healthcare dollars
they do not interfere with the effects of the drug. While there are many generics on the market it is important to remember that not all prescription drugs have a generic alternative.

Hatch-Waxman and the Rise of Generic Drugs

The Hatch-Waxman Act gave a shot in the arm of the generic drug industry by introducing the Abbreviated New Drug Application (ANDA) in 1984. ANDAs allowed the FDA to approve of generic drugs if the generic can prove bioequivalence to the originator. This means the entire lengthy and costly clinical trial period could be bypassed. Additionally, the act allowed generic pharmaceutical companies to develop versions of innovator drugs so that a generic drug would be available to the public the day the brand name drug’s patent expired. The first generic drug that receives an ANDA approval also gains a 180-day exclusivity period where no other generic for the same innovator can be approved for market.

On the other hand, Hatch-Waxman rewarded innovator drugs by extending the length of patents on pioneer drugs to include up to half the time of clinical trials and FDA review period or five years, whichever is lower. The total maximum length of market exclusivity was extended to fourteen years. This allowed brand name manufacturers what was considered to be a reasonable amount of time to recoup the enormous cost of research and development. Innovator drug manufacturers can also apply for additional patent extensions if they can prove using clinical trials that the drug is effective in treating other diseases.

ANDA Backlog Will Lead to Delayed Generic Drug Review

Within the last few years, evidence has been mounting for the need of new user fee legislation for generics. ANDA submissions continue to grow but approvals have stagnated (Figure 1). Currently, without GDUFA, the FDA relies on funds strictly appropriated for generic reviews and the average review period of a single ANDA submission takes about 31 months or approximately 2.5 years. These lengthy times are caused by a backlog of about 2,500 ANDAs pending review. Although the backlog has only caused delays for a minority of generics, a continuously growing backlog would undoubtedly become an issue in the near future. Perhaps the FDA learned from its past mistake of letting the brand name drug review backlog get too large before enacting PDUFA.

Figure 1: ANDA Submissions and Approvals 1999-2009

Contamination of Ingredients Threatens Drug Safety

In addition to lengthy review times, the 2008 Heparin contamination scandal led the call for increased pharmaceutical inspections for international manufacturers. The incident, which was linked to eighty one deaths, shed light on the previously unknown fact that around 80 percent of active pharmaceutical ingredients (APIs) are produced abroad, largely in uninspected facilities. On average, the FDA can only inspect 40 percent of domestic facilities and 11 percent of foreign establishments. Current estimates suggest that it would take the FDA nine years to fully inspect the large number of foreign facilities used. Given the resource limitations the FDA is faced with, the agency is unable to meet the challenges of a globalized supply chain and imposes serious risk to the security of public health. A portion of GDUFA resources will go toward funding FDA inspection of facilities for good manufacturing practices.

GDUFA: Industry-FDA Agreement to Thwart Delays Due to Review

Like PDUFA, GDUFA is an agreement reached by the generic drug industry and FDA to charge manufacturers fees in order to expedite the lengthy review process. If proceedings go as planned, Congress’s authorization of GDUFA will combat the aforementioned issues by allocating user fee revenues to increase the number of facility inspections. Annually, the program is expected to receive an agreed-upon amount of $299 million adjusted for inflation that will supplement any appropriated funding from Congress. In the first five years GDUFA is expected to bring in $1.5 billion and $50 million in the first year from backlog fees alone. The current proposed fee structure expects to receive about 30 percent of the funds from applications fees and about 70 percent of the funds from facilities fees. Further, facilities fees will be paid by both finished dosage manufacturers, who provide the complete and finished drugs, and API manufacturers who only produce active ingredients. Application fees on the other hand, will consist of backlog fees, drug master file fees, and ANDA and prior approval supplements (PAS) filing fees (Figure 2). Ultimately, user fees according to GDUFA will be calculated annually based on current historical data and, like PDUFA, will be up for reauthorization after five years.

Figure 2: GDUFA Fee Structure

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GDUFA Changes FDA Generic Review Landscape

With millions in new funds, GDUFA will include performance goals that cover improvements over a broad range including review times, staffing, communications, and submission methods. By the end of fiscal year (FY) 2017, the FDA plans to review and act on 90 percent of backlog applications that are pending as of October 1st, 2012. GDUFA will standardize electronic submissions of ANDAs and streamline human resource services to hire at full time employees to review submissions. Current benchmarks include hiring and training staff incrementally, with at least 25 percent by FY 2013 then 50 percent in FY 2014. With new staff members, GDUFA fees will contribute to the FDA’s goal of conducting biennial inspections for both domestic and international facilities. In order to assist companies in the review process, the FDA will work towards holding cycle deficiency teleconferences that aim to increase communication with the industry as well as address questions in individual submissions. Through GDUFA, the FDA hopes to head hundreds of teleconferences by the end of the authorization in 2017.

Conclusion

At present, generic pharmaceuticals is the largest category of products that must be pre-approved and regulated by the FDA. As healthcare costs continue to skyrocket, the FDA needs stability and the funds to efficiently review drug applications as well as help the FDA monitor the safety of foreign manufacturing facilities. The industry fees laid out under GDUFA are not expected to significantly add to or change the cost of generics. Considering that almost four billion prescriptions were filled in 2010, user fees are projected to add less than ten cents to the average cost of generic drugs. GDFUA funds will ultimately facilitate reviews of generic drugs so that patients have the flexibility to choose an affordable and effective option for managing their medical conditions.
References

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